

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:99-CR-01-03

Plaintiff,

Hon. Richard Alan Enslen

v.

KENNETH JEROME VALENTINE,

Defendant.

ORDER

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This matter is before the Court on Defendant's Application to Proceed *In Forma Pauperis* on Appeal. Defendant has appealed the Court's denial of his petition for writ of habeas corpus and seeks to proceed as a pauper on appeal. Defendant also seeks appointment of counsel.

In *Kincade v. Sparkman*, 117 F.3d 949 (6th Cir. 1997), the Sixth Circuit Court of Appeals held that the fee requirements of the Prison Litigation Reform Act do not apply to "cases or appeals" brought pursuant to 28 U.S.C. §§ 2254 or 2255. *Id.* at 951. Instead, requests to proceed as a pauper on appeal are processed in accordance with Fed. R. App. P. 24(a). *Id.* at 952. Defendant has complied with the requirements of Fed. R. App. P. 24(a), and it further appears that he is indigent. Therefore, the Court will grant Defendant's request to proceed as a pauper on appeal.

The Court will deny Defendant's request for appointment of counsel as unnecessary because Federal Rule of Appellate Procedure 22, 6th Cir. I.O.P. 22(b) states that the Clerk of the Court of Appeals shall appoint counsel to a *pro se* petitioner in a 28 U.S.C. § 2255 case if the petitioner is a pauper.

THEREFORE, IT IS HEREBY ORDERED that Defendant's Application (Motion) to Proceed *In Forma Pauperis* (Dkt. No. 581) is **GRANTED in part** and **DENIED in part**.

DATED in Kalamazoo, MI:
July 18, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE